

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION  
NO. 04-10390-MLW

MATTHEW COBB, ESQ.,

Plaintiff,

v.

THE SUPREME JUDICIAL COURT OF  
THE COMMONWEALTH OF  
MASSACHUSETTS,

Defendants.

**DEFENDANTS' PROPOSED SCHEDULE**

Pursuant to the Court's Order of May 5, 2004, Defendants submit the following proposed schedule. On August 12, 2004, the parties conferred regarding scheduling, but were unable to reach agreement regarding a proposed schedule for resolving the Plaintiffs' motion for a preliminary injunction and Defendants' motion to dismiss. Accordingly, Defendants propose the following schedule:

1. *Plaintiff's Renewed Motion for a Temporary Restraining Order*: Except to request that a hearing on Plaintiff's renewed motion not be scheduled for August 24, 2004 or August 26, 2004, Defendants take no position on the scheduling of a hearing, if any, on Plaintiff's renewed motion. Defendants, however, note that to date, Plaintiff has not filed an appeal of the Single Justice order of August 2, 2004, nor has Plaintiff requested a stay of the Single Justice order.

Defendants would oppose Plaintiff's request that a preliminary injunction hearing be consolidated with a hearing on the merits, since Defendants have pending before this Court a motion to dismiss the action, which should be resolved before reaching the merits of Plaintiffs'

free speech claim.

2. *Defendants' Motion to Dismiss*: Defendants request that this Court lift the stay in this action and rule on Defendants' motion to dismiss. Defendants do not agree that an evidentiary hearing is required before this Court can rule on the motion to dismiss. The First Circuit's decision in Bettencourt v. Board of Registration of Medicine, clearly provides that a claim based on the "unusual circumstances" exception to Younger abstention should be dismissed when it is raised in the context of review of state administrative proceedings and the plaintiff does not raise it until after state judicial review has been instituted. 904 F.2d 772, 779-80 (1<sup>st</sup> Cir. 1990). In other words, for Plaintiff's bad-faith claim to have even been entertainable by this Court, Plaintiff must have raised the claim in this Court while the state administrative action was still pending and before state judicial proceedings had been instituted. He did not. Hence, an evidentiary hearing is not required to resolve the motion to dismiss.

Respectfully submitted,

THOMAS F. REILLY  
ATTORNEY GENERAL

/s/

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John R. Hitt, BBO #567235  
Assistant Attorney General  
Government Bureau  
One Ashburton Place, Room 2019  
Boston, MA 02108  
(617) 727-2200, ext. 2995

Dated: August 17, 2004